

REMARKS

This amendment is in response to the Office Action of November 12, 1999. Claims 1-5, 11-17, 25-28 and 33-38 are currently pending in the application. Reconsideration of the application is respectfully requested in view of the amendments and remarks presented herein.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 4, 14, 16, 27, 35, and 36 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The objected to term, "predetermined", does not appear in claim 36, but rather in claim 37.

Claims 4, 14, 16, 27, 35, and 37 have each been amended to remove the term "predetermined". Accordingly, it is respectfully submitted that each of these claims now particularly points out and distinctly claims the subject matter of the invention as required by 35 U.S.C. § 112, second paragraph. Therefore, it is respectfully requested that the 35 U.S.C. § 112, second paragraph rejections of claims 4, 14, 16, 27, 35, and 36 (presumably claim 37) be withdrawn.

Rejections Under 35 U.S.C. § 102(e)

Claims 1-4, 11-14, 16, 25-27, 33-35, and 37 were rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent 5,960,297 to Saki (hereinafter "Saki").

Section 102 provides:

A person shall be entitled to a patent unless –
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title *before* the invention thereof by the applicant for patent . . .
(Emphasis supplied).

Saki, which issued on September 28, 1999, was not filed until July 2, 1997—more than six months after the 35 U.S.C. § 120 priority date (January 27, 1997) of this application. As

paragraph 17 of the UTILITY PATENT APPLICATION TRANSMITTAL in this application indicates, this application is a divisional of prior application serial no. 08/789,470. A copy of the UTILITY PATENT APPLICATION TRANSMITTAL is enclosed. A divisional application that complies with the requirements of section 120 "shall be entitled to the benefit of the filing date of the original application." 35 U.S.C. § 121. Thus, it is respectfully submitted that Saki is not prior art to this application.

Accordingly, it is respectfully submitted that each of claims 1-4, 11-14, 16, 25-27, 33-35, and 37 is allowable.

Rejections Under 35 U.S.C. § 103(a)

Claims 5, 15, 28, and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Saki as applied to claims 1-4, 11-14, 16, 25-27, 33-35 and 37 and further in view of United States Patent 5,834,358 to Pan et al. (hereinafter "Pan").

Claims 17 and 38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Saki as applied to claims 1-4, 11-14, 16, 25-27, 33-35 and 37 and further in view of the Examiner's additional comments.

As Saki is not prior art to this patent application, and because each of the section 102 rejections presented in the outstanding Office Action were based on Saki as the primary reference, it is respectfully requested that the section 103 rejections of claims 5, 15, 17, 28, 36, and 38 be withdrawn. It is further submitted that each of these claims is allowable.

Conclusion

It is respectfully requested that claims 1-5, 11-17, 25-28, and 33-38 be reconsidered and the case passed for issue. If any issues preventing issuance of this application at an early date remain, the Office is respectfully invited to telephone the undersigned.

Respectfully submitted,



Brick G. Power
Attorney for Applicant
Registration No. 38,581
TRASK, BRITT & ROSSA
P.O. Box 2550
Salt Lake City, Utah 84110
(801) 532-1922

Date: February 9, 2000

BGP/sls:djp

N:\2269\2919.1\Amendment.wpd